

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1591 of 1983

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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P. S. DAVE & ORS.

Versus

STATE OF GUJARAT & ORS.

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Appearance:

MR PV HATHI for Petitioners

MR NIGAM SHUKLA for Respondents

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CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 09/08/96

#### ORAL JUDGMENT

Heard learned counsel for the parties. The petitioners, in all 12 in number, out of which some working as Store Mistris and some as Karkoons in the work charge establishment in Mahi Mechanical Sub Division or in Workshop Sub Division at Thasra, Dist. Kheda, have filed this writ petition before this Court in which they have prayed for grant of relief as extracted below:

- (A) to allow this petition with costs;
- (B) to direct the respondents to confer the same benefits of special pay and enjoyment of Public holidays in the same terms as are provided in the Government Resolution dated 7th September, 1981 and/or 19th February, 1983 with effect from 1.4.1973;
- (C) to direct the respondents to sanction 15 percent posts of selection grade in the pay scale of Rs.350-490 as recommended by the Desai Pay Commission in its report, page 161 of Volume II, Part-II for the posts held by the petitioners;
- (D) to direct the respondents for fix the salary of the petitioners in the selection grade and to grant all consequential benefits of payment of arrears etc. in the selection grade of Rs.350-490.
- (E) to issue interim mandatory order directing the respondents to permit the petitioners to enjoy public holidays including closed Saturdays in rotation in the same manner and/or to fix the special pay by way of an interim arrangement, till and pending the hearing and final disposal of this petition;
- (F) to pass such other order or orders as the nature and circumstances of the case may require;"

2. The special pay and enjoyment of public holidays has been claimed on the basis of Resolution of the Government dated 7th September 1981 and/or 19th February, 1983 with effect from 1.4.1973. The learned counsel for the petitioner admits that the benefits of enjoyment of Government holidays and special pay are being given to the Deputy Engineers, Junior Engineers and Supervisors who have been posted in the Workshop. He further admits that these benefits have been given on the basis of the decision given by this Court in Special Civil Application No. 286 of 1977 and Special Civil Application No.3970 of 1982. The first writ petition has been filed by the Junior Engineers, Supervisors and Deputy Engineers working in Workshops under Building & Construction Department. In that Special Civil Application, grievance has been made by that class of persons that their service conditions are being regulated under the provisions of the Bombay Civil Service Rules and under the said Rules, these class of persons have come up with the case, they

are entitled for benefits of closed Saturdays and public holidays, where because of their postings in the Workshops, their working hours are increased and they have to attend the duties also on closed Saturdays and public holidays. It is stated to be a change in the service condition. The learned counsel for the petitioners does not dispute that the petitioners in the Special Civil Application No.268/77 were the employees in the regular establishment and their service conditions were regulated under the provisions of the Bombay Civil Service Rules. On 29th July 1981, the aforesaid petition has been allowed and that claim of those persons has been accepted by this Court. Pursuant to that decision of this Court, the Government issued a Resolution dated 7.9.81 by which it is decided to grant special pay to that class of persons from 1.4.77 at the rate as specified therein with further provisions to enjoy closed Saturdays and public Holidays in rotation. The next petition, Special Civil Application No.3970 of 1983 has been filed by the Engineers, Junior Engineers and Supervisors of the Thasara Workshop, Irrigation Department, alleging that they were not given the same benefits which were given to their counterparts working in in the Workshops. This Special Civil Application has also been allowed by this Court on 6.12.82 and the benefits of special pay and entitlement to enjoy closed Saturdays and public holidays were also extended to that class of persons of the Irrigation Department on their postings in the Workshops. In pursuance of the decision of this Court, the Government has issued a Resolution dated 19th February 1983. The petitioners in this petition expected of giving them those benefits, but they came to know that the effect of the said Resolution is extended only to the Deputy Engineers, Junior Engineers and Supervisors of the same Workshop and not to them.

3. The petitioners are undisputedly the employees of the Workshop establishment and they have been appointed in the Workshop itself. Their service conditions are being regulated under the P.W.D. Manual. Only a few provisions of the Bombay Civil Service Rules were made applicable to the Workcharge employees. The other class of persons, as stated earlier, belong to the regular establishment and by their posting in the Workshop, their service conditions are being changed. This class of persons are not on Workcharge establishment as well as the persons appointed in the Workshop. The employees of Workcharge establishment, and the employees of regular establishment on their posting in the Workshop, do not constitute one class. These are two separate categories of persons and as such, the petitioner would not have

been entitled for the benefits which have been extended to the said class of persons. It is not the case of any discrimination as sought to be presented by the petitioners. Case of discrimination could have been there only when it was a matter of one class, but that is not the case here. The petitioners, merely on the basis of the fact that the other persons have been given benefits who do not belong to their class, cannot get the benefits of the special pay and their entitlement to enjoy closed Saturdays and other public holidays. The learned counsel for the petitioners is unable to make out any case of discrimination or of unequal treatment given to the petitioners in grant of special pay and benefits of closed Saturdays and other public holidays. The first prayer made by the petitioners is therefore rejected.

4. The second prayer of the petitioners is that the respondents may be directed to sanction 15% post of Selection grade in the pay scale of 350-490 as recommended by the Desai Pay Commission in its report, at page No.161 of Volume II, Part II, from the posts held by the petitioners. The respondents, in their reply, have come up with the case that the Second Pay Commission (i.e. Desai Pay Commission) has not recommended for selection grade to the employees of Workcharge establishment working as Store Mistris and Karkoons. They have also come up with the case that the petitioners have compared their services at par with those of Technical persons borne on the regular establishment whose services are regulated under the Rules framed under proviso to Article 309 of the Constitution of India. This claim is also not sustainable.

5. A rejoinder has been filed by the petitioners and therein they have reiterated that the Desai Pay Commission recommended for selection scale, for the limited extent, to be given to the Workcharge employees to the category to which the petitioners belong. In rejoinder, recommendations of Desai Pay Commission have also been extracted.

6. The recommendations of a Pay Commission are not binding to the respondents. They may accept or may not accept the same. It is a claim for grant of selection scale to the persons belonging to a particular category of employment, herein the Workcharge employees' category. The claim is based in terms that 15% posts of the category to which the petitioners belong should be made in the selection grade in the pay scale of 350-490, i.e. the higher pay scale than the pay scale of the post concerned. So, in sum and substance, it is a case of the

petitioners for issuing a writ of Mandamus to the respondents for giving of selection grade to 15% posts. It is a settled law that creation or abolition of posts is prerogative of the Executive. A reference in this respect may have to the decision of the Supreme Court in the case of State of Haryana v. Dharamsingh, reported in AIR 1992 2130. The petitioners' claim is based only on the recommendations of the Pay Commission, which, as stated earlier, are not binding. If it is so, then the prayer made by the petitioners for directing the respondents to give them selection grade to the extent of 15% of the total posts in the lower category, cannot be accepted. This Court cannot issue a writ of Mandamus or any writ or direction to the respondents to compel them to give effect to recommendations of the Pay Commission.

7. However, though this Court may not grant a relief of the nature as prayed, but in case the Pay Commission has recommended for giving of selection grade to 15% posts of lower category, then these recommendations have to be considered by the respondents. Merely because these recommendations are not binding to the respondents, they cannot ignore the same altogether or not to think of those recommendations. The respondents have to consider those recommendations and then to take a conscious decision to accept or not to accept the same. The Pay Commission's recommendations are not scrap papers and are not to be thrown in dust bin. Whatever recommendations have been made by the Pay Commission, should get a due consideration by the respondents and only after applying its mind thereto, it may reach to its own logical conclusion whether the same has to be accepted or not. The dispute here in between the parties is that the petitioners say that the recommendations were made by the Desai Pay Commission whereas the respondents deny the same. It is only a matter to look at the recommendations made by the Pay Commission and in case on going through the recommendations, it is found by the respondents that such recommendations are made, it has to consider the same on merits. That exercise has to be undertaken by the competent officer of the respondent. Though on merits the second prayer of the petitioners is not acceptable, but at the same time, the action of not finding out from the Pay Commission's report whether such recommendations have been made or not as asserted by the petitioners, by the respondents, also cannot be said to be justified. In case the recommendations, as claimed by the petitioners, are made in the Pay Commission's report, then the respondents have to consider the same and pass a just and reasonable order. It is therefore expected of the respondents that this exercise will now be undertaken

and in case such recommendations are made by the Desai Pay Commission, the same may be considered on merits and reach a conclusion whether they are to be accepted or not.

8. In the result, this Special Civil Application fails subject to observations made above. Rule is discharged. No order as to costs.

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(sunil)